here. The case differed, as this court considered, in no respect from the case just decided, but one, which was that when the register and receiver decided in favor of Smiley against Samson, in the contest for the right of pre-emption to the land, they did not give him a patent certificate as they did to Towsley. The reason for this seemed to be that the contest between him and Samson was prosecuted immediately from the register and receiver's decision to the commissioner, and from the commissioner's decision affirming that of the register and receiver, to the secretary, so that there was no period, until the final decision of the latter, when either party could have been permitted to make the entry; but the record showed that, on a full and thorough investigation, all the officers of the land department decided that Smiley had established his right of pre-emption, and the secretary overruled this on the sole ground that he had filed a declaratory statement for another tract of land.

After argument by *Mr. Trumbull, for Samson et al., plaintiffs in error, and by Messrs. M. H. Carpenter, J. M. Woolworth, and A. J. Poppleton, contra,* the judgment of the court was delivered by Mr. Justice MILLER, to the effect that the land in question, having never been subject to private entry, the construction of the statute made by the secretary was erroneous, and operated to deprive Smiley of his right, otherwise perfect, to the land, and to vest the legal title, which he ought to have received, in Samson. The case came, therefore, as the court considered, within the principle just decided in *Towsley* v. *Johnson*, and the judgment of the Supreme Court of Nebraska was accordingly

AFFIRMED.

GIBSON v. CHOUTEAU.

1. Statutes of limitation of a State do not apply to the State itself, unless it is expressly designated, or the mischiefs to be remedied are of such a nature that it must necessarily be included; and they do not apply to the United States.
2. The power of Congress in the disposal of the public domain cannot be interfered with, or its exercise embarrassed by any State legislation; nor can such legislation deprive the grantees of the United States of the possession and enjoyment of the property granted by reason of any delay in the transfer of the title after the initiation of proceedings for its acquisition.

Statement of the case.

3. The patent is the instrument which, under the laws of Congress, passes the title of the United States, and in the action of ejectment in the Federal courts for lands derived from the United States the patent, when regular on its face, is conclusive evidence of title in the patentee. And in the action of ejectment in the State courts when the question presented is whether the plaintiff or the defendant has the superior legal title from the United States, the patent is also conclusive.
4. The occupation of lands derived from the United States, before the issue of their patent, for the period prescribed by the statutes of limitation of a State for the commencement of actions for the recovery of real property, is not a bar to an action of ejectment for the possession of such lands founded upon the legal title subsequently conveyed by the patent. Nor does such occupation constitute a sufficient equity in favor of the occupant to control the legal title thus subsequently conveyed, whether asserted in a separate suit in a Federal court, or set up as an equitable defence to an action of ejectment in a State court.
5. The doctrine of relation is a fiction of law adopted by the courts solely for the purposes of justice, and, where several proceedings are required to perfect a conveyance of land, it is only applied for the security and protection of persons who stand in some privity with the party that initiated the proceedings and acquired the equitable claim or right to the title. It does not affect strangers not connecting themselves with the equitable claim or right by any valid transfer from the original or any subsequent holder.

ERROR to the Supreme Court of the State of Missouri.

Gibson brought ejectment in the St. Louis Land Court against Chouteau, to recover sixty-four acres of land in the county of St. Louis, Missouri. By consent of parties the case was tried by the court without a jury. On the trial the plaintiff claimed title to the demanded premises, under a patent of the United States issued to his immediate grantor, which he produced. The facts which led to the issue of the patent were these:

As early as September, 1803, as appeared from the record, one James Y. O'Carroll obtained permission from the Spanish authorities to settle on vacant lands in the District of New Madrid, in the Territory of Louisiana. In pursuance of this permission he occupied and cultivated, previously to December 20th, of that year, portions of a tract embracing one thousand arpents of land, in that part of the country which afterwards constituted the county of New Madrid in the Territory of Missouri. After the cession of Louisiana

Statement of the case.

to the United States, he claimed the land by virtue of his settlement; and this claim was subsequently confirmed to him and his legal representatives, under different acts of Congress, to the extent of six hundred and forty acres.

In 1812 a large part of the land in the county of New Madrid was injured by earthquakes; and in 1815 Congress passed an act for the relief of parties who had thus suffered.* By this act, persons whose lands had been materially injured were authorized to locate a like quantity of land on any of the public lands in the Territory of Missouri, the sale of which was authorized by law. And it was made the duty of the recorder of land titles in the Territory, when it appeared to him, from the oath or affirmation of a competent witness or witnesses, that any person was entitled to a tract of land under the provisions of the act, to issue to him a certificate to that effect. On this certificate, upon the application of the claimant, a location was to be made by the principal deputy surveyor of the Territory, who was required to cause the location to be surveyed, and a plat of the same to be returned to the recorder with a notice designating the tract located, and the name of the claimant.

The act further provided for a report to be forwarded by the recorder to the Commissioner of the General Land Office, of the claims allowed and locations made; and for the delivery to each claimant of a certificate of his claim and location which should entitle him, on its being transmitted to the commissioner, "to a patent to be issued in like manner as is provided by law for other public lands of the United States." The act also declared, that in all cases where the location was made under its provisions, the title of the claimant to the injured land should revert to and vest in the United States.

The land claimed by O'Carroll, in New Madrid County, afterwards confirmed to him, as already stated, to the extent of six hundred and forty acres, was injured by earthquakes, and in November, 1815, the recorder of land titles in St.

* 3 Stat. at Large, 211.

Louis, upon proper proof of the fact, gave a certificate to that effect, and stating that under the act of Congress O'Carroll, or his legal representatives, were entitled to locate a like quantity on any of the public lands of the Territory of Missouri, the sale of which was authorized by law.

In June, 1818, a location of the land was made on behalf of one Christian Wilt, who had become by mesne conveyances the owner of the interest of O'Carroll. The land thus located had been previously surveyed by the deputy surveyor of the Territory, but from some unexplained cause the survey and plat thereof were not returned to the recorder, until August, 1841. The recorder then issued a patent certificate to "James Y. O'Carroll or his legal representatives." A report of the location was also made by him, as required by the act of Congress, to the Commissioner of the General Land Office, but it appeared that the survey of the location did not meet the approval of that officer, as it did not show its interferences with conflicting claims. Accordingly, in a communication dated in March, 1847, the commissioner required the surveyor-general of Missouri to examine into the interferences, and ascertain the residue of the O'Carroll claim, and stated that on the return to the land office "of a proper plat and patent certificate for said residue, a patent" would issue. Under these instructions a new survey and plat were made, showing the interferences of the survey with other claims, and on the 26th of March, 1862, were filed with the recorder, and a new patent certificate was issued. Upon the corrected survey and plat and new certificate, the patent of the United States was, in June, 1862, issued to Mary McRee, who had acquired by various mesne conveyances the interest of Wilt in the land. In August following she conveyed to the plaintiff.

On the trial, the defendants endeavored to show that they had become, through certain legal proceedings, the owners of the interest originally possessed by Wilt, and consequently had acquired the equitable title to the land upon which they could defend against the patent, under the practice which prevails in Missouri. But in this endeavor they failed, the

Supreme Court of the State holding that the conveyances under which they claimed were inoperative and void.

The defendants also relied upon a deed of Samuel McRee and wife,* executed in 1838, contending that by operation of the deed under the statutes of Missouri, the equitable title which these grantors had subsequently acquired to the land and also the legal title conveyed by the patent to Mrs. McRee enured to the benefit of the defendants; but the Supreme Court held that the deed only had the effect of a quit-claim of an existing interest, and did not affect any subsequently acquired title.

The rulings of the State court upon these grounds were not open to review in this court, as they involved no questions of Federal jurisdiction. But it also appeared in evidence that the defendants, previous to the issue of the patent, had been in the possession of the demanded premises more than ten years, the period prescribed by the statute of Missouri, within which actions for the recovery of real property must be brought. By the statutes of the State the action of ejectment will lie on certain equitable titles. It may be maintained on a New Madrid location against any person not having a better title.† The defendants, therefore, contended that the statute of limitation, which had run against the equitable title, created by the location of the O'Carroll claim, was also a bar to the present action founded upon the legal title, acquired by the patent of the United States.

The Land Court held that the effect of the patent issued by the United States to Mrs. McRee was to invest her with the legal title to the land in dispute; and that the title vested in the plaintiff through the deed to him from Mrs. McRee was superior to any title shown by the defendants to the land in question under the New Madrid certificate of location, and that the said patent having issued to Mrs. McRee within ten years next before the commencement of this suit, the possession of the defendants was not a bar to the

* The Mary McRee already named.

† General Statutes of Missouri of 1825, chap. 151, sections 1 and 11.

plaintiff's recovery, and gave verdict and judgment accordingly for the plaintiff. From the judgment the case was taken to the Supreme Court of the State, and was twice heard there. Upon the first hearing the court affirmed the decision of the inferior court, holding that "until the patent issued the legal title remained in the United States, and the statute of limitations did not begin to run against the plaintiff before the date of that patent."

On the second hearing the court adhered to all its previous rulings except that which related to the effect of the statute of limitations, and upon that it changed its previous ruling and held that the statute barred the right of action upon the patent. In its opinion given on the second decision, after referring to its previous conclusion, cited above, it said:

"This conclusion proceeded upon the ground that although the action given by the statute upon the equitable right only, which had passed out of the United States, might be barred, it did not follow that an action based upon the right of entry by virtue of the absolute legal title by patent, would also be barred. The idea that the fiction of relation could be applied not only to carry the legal title to the owner of the inceptive right through the intermediate conveyances, but also for the purpose of bringing it within the operation of the statute of limitations from the date of the inceptive equity, had not been suggested and had not occurred to us."

Again the court, after recognizing the fact that the legal title remained in the United States till the patent issued, and that the location only gave an equitable right, upon which an action was sustainable in the State courts by virtue of the State statute, said:

"The two rights of entry, therefore, are distinct in themselves, and the causes of action have a different foundation. The possession of the land is claimed in both, but by different rights, and if there were nothing more the one cause of action might be barred and not the other. But there is another principle upon which we think the statute may be made to operate here as a bar to the plaintiff's action, and that is the fiction of relation whereby the legal title is to be considered as passing

out of the United States through the patent at its date, but as instantly dropping back in time to the date of the location as the first act or inception of the conveyance, to vest the title in the owner of the equity as of that date and make it pass from him to the patentee named through all the intermediate conveyances, and so that the two rights of entry and the two causes of action are thus merged in one, and the statute may be held to have operated on both at once. The legal title, on making this circuit, necessarily runs around the period of the statute bar, and the action founded on this new right is met by the statute on its way and cut off with that which existed before."

The Supreme Court accordingly reversed the decision of the Land Court, and the case was brought here on writ of error under the 25th section of the Judiciary Act, and is reported in *Gibson* v. *Chouteau*, 8th Wallace, 314. When presented, the record disclosed questions respecting the validity of Mrs. McRee's title, the transfer of her title to the plaintiff, and the trust asserted by which it was contended that the plaintiff's title enured to the benefit of the defendants, as well as the statute of limitations. This court, therefore, as the report already mentioned shows, dismissed the writ of error, because the record did not show that the decision of the State court turned on the question of the statute of limitations or that the determination of this question against the plaintiff was essential to the second judgment rendered.

When the case went back to the Supreme Court of the State, that court set aside its judgment, stating that it had been rendered on the question of the statute of limitations; but that by a clerical error such fact was not stated therein. The case was then again submitted to that court, and the court then adjudged that the plaintiff was barred by the statute of limitations, all other questions being determined in his favor. It was this judgment which was now brought before this court on writ of error.

Messrs. Montgomery Blair and F. A. Dick, for the plaintiff in error.

Messrs. Glover and Shepley, contra.

Opinion of the court.

Mr. Justice FIELD delivered the opinion of the court.

It is matter of common knowledge that statutes of limitation do not run against the State. That no laches can be imputed to the king, and that no time can bar his rights, was the maxim of the common law, and was founded on the principle of public policy, that as he was occupied with the cares of government he ought not to suffer from the negligence of his officers and servants. The principle is applicable to all governments, which must necessarily act through numerous agents, and is essential to a preservation of the interests and property of the public. It is upon this principle that in this country the statutes of a State prescribing periods within which rights must be prosecuted are not held to embrace the State itself, unless it is expressly designated or the mischiefs to be remedied are of such a nature that it must necessarily be included. As legislation of a State can only apply to persons and things over which the State has jurisdiction, the United States are also necessarily excluded from the operation of such statutes.*

With respect to the public domain, the Constitution vests in Congress the power of disposition and of making all needful rules and regulations. That power is subject to no limitations. Congress has the absolute right to prescribe the times, the conditions, and the mode of transferring this property, or any part of it, and to designate the persons to whom the transfer shall be made. No State legislation can interfere with this right or embarrass its exercise; and to prevent the possibility of any attempted interference with it, a provision has been usually inserted in the compacts by which new States have been admitted into the Union, that such interference with the primary disposal of the soil of the United States shall never be made. Such provision was inserted in the act admitting Missouri, and it is embodied in the present Constitution, with the further clause that the legislature shall also not interfere "with any regulation that Congress may find necessary for securing the title in such soil to the *bonâ fide* purchasers."

* United States v. Hoar, 2 Mason, 312; People v. Gilbert, 18 Johnson, 228.

The same principle which forbids any State legislation interfering with the power of Congress to dispose of the public property of the United States, also forbids any legislation depriving the grantees of the United States of the possession and enjoyment of the property granted by reason of any delay in the transfer of the title after the initiation of proceedings for its acquisition. The consummation of the title is not a matter which the grantees can control, but one which rests entirely with the government. With the legal title, when transferred, goes the right to possess and enjoy the land, and it would amount to a denial of the power of disposal in Congress if these benefits, which should follow upon the acquisition of that title, could be forfeited because they were not asserted before that title was issued.

Yet such forfeiture is claimed by the defendants in this case, and is sanctioned by the decision of the Supreme Court of Missouri. That court does not, it is true, present its decision in this light, but on the contrary it attempts to reconcile its decision with positions substantially such as we have already stated respecting the power of Congress over the public lands, and the inability of the State to interfere with the primary disposal of the soil of the United States. It declares it to be well settled, that statutes of limitation of a State cannot run against the United States, nor affect their grantees, until the title has passed from the proprietary sovereignty; that these statutes operate to bar the cause of action, not to convey the title; that no cause of action upon a right of entry by virtue of the legal title by patent can exist until the patent is issued; and that the action upon the equitable title created by the location is only given by a statute of the State; and as the two rights of entry have a different origin, that the latter, resting on the statute, might be barred, whilst that resting on the patent would continue in force, but for the operation of the fiction of relation. By a novel application of that doctrine, the court comes to the conclusion that the statute operates against both rights of entry at the same time.

By the doctrine of relation is meant that principle by

which an act done at one time is considered by a fiction of law to have been done at some antecedent period. It is usually applied where several proceedings are essential to complete a particular transaction, such as a conveyance or deed. The last proceeding which consummates the conveyance is held for certain purposes to take effect by relation as of the day when the first proceeding was had. Thus, in the present case, the patent, which was issued in 1862, is said to take effect by relation at the time when the survey and plat of the location, made in 1818, were returned to the recorder of land titles under the act of Congress. At that time the title of the claimant to the land desired by him had its inception, and so far as it is necessary to protect his rights to the land, and the rights of parties deriving their interests from him, the patent is held to take effect by relation as of that date.*

The Supreme Court of Missouri, considering that by this doctrine of relation, the legal title, when it passed out of the United States by the patent, instantly dropped back in time to the location of the first act or inception of the conveyance, and vested the title in the owner of the equity as of that date, held that the statute intercepted the title as it passed through the intermediate conveyances from that period to the patentee. "The legal title," said the court, "in making this circuit, necessarily runs around the period of the statute bar, and the action founded upon this new right is met by the statute on its way, and cut off with that which existed before."†

The error of the learned court consisted in overlooking the fact that the doctrine of relation is a fiction of law adopted by the courts solely for the purposes of justice, and is only applied for the security and protection of persons who stand in some privity with the party that initiated proceedings for the land, and acquired the equitable claim or right to the title.‡ The defendants in this case were strangers to

* Lessieur *v.* Price, 12 Howard, 74.

† Gibson *v.* Chouteau's Heirs, 39 Missouri, 588.

‡ Lynch *v.* Bernal, 9 Wallace, 315; Jackson *v.* Bard, 4 Johnson, 230;

that party and to his equitable claim, or equitable title, as it is termed, not connecting themselves with it by any valid transfer from the original or any subsequent holder. The statute of limitations of Missouri did not operate to convey that claim or equitable title to them. It only extinguished the right to maintain the action of ejectment founded thereon, under the practice of the State. It left the right of entry upon the legal title subsequently acquired by the patent wholly unaffected.

In the Federal courts, where the distinction between legal and equitable proceedings is strictly maintained, and remedies afforded by law and equity are separately pursued, the action of ejectment can only be sustained upon the possession by the plaintiff of the legal title. For the enforcement of equitable rights, however clear, distinct equitable proceedings must be instituted. The patent is the instrument which, under the laws of Congress, passes the title of the United States. It is the government conveyance. If other parties possess equities superior to those of the patentee, upon which the patent issued, a court of equity will, upon proper proceedings, enforce such equities by compelling a transfer of the legal title, or enjoining its enforcement, or cancelling the patent.* But, in the action of ejectment in the Federal courts, the legal title must prevail, and the patent, when regular on its face, is conclusive evidence of that title.

So also in the action of ejectment in the State courts, when the question presented is whether the plaintiff or the defendant has the superior legal title from the United States, the patent must prevail. For, as said in *Bagnell* v. *Broderick*,† " Congress has the sole power to declare the dignity and effect of titles emanating from the United States; and the whole legislation of the Federal government in reference to the public lands declares the patent the superior and con-

Heath *v.* Ross, 12 Id. 140; Littleton *v* Cross, 5 Barnewall and Creswell, 325, 328.

* Stephenson *v.* Smith, 7 Missouri, 610; Barry *v.* Gamble, 8 Id. 881; Cunningham *v.* Ashley, 14 Howard, 377; Lindsey *v.* Hawes, 2 Black, 554; Stark *v.* Starrs, 6 Wallace, 402; Johnson *v.* Towsley, *supra*, p. 72.

† 13 Peters, 450.

clusive evidence of legal title. Until its issuance the fee is in the government, which, by the patent, passes to the grantee, and he is entitled to recover the possession in ejectment."

In several of the States, and such is the case in Missouri, equities of the character mentioned, instead of being presented in a separate suit, may be set up as a defence to the action of ejectment. The answer or plea in such case is in the nature of a bill in equity, and should contain all its essential averments. The defendant then becomes, with reference to the matters averred by him, an actor, and seeks, by the equities presented, to estop the plaintiff from prosecuting the action, or to compel a transfer of the title.*

In *Maguire* v. *Vice*,† where the plaintiff brought ejectment on a legal title, and gave in evidence a patent of the United States, and the defendant relied upon an equitable defence, the Supreme Court of Missouri said: "Although our present practice act abolishes all distinctions between legal and equitable actions, yet a party who seeks relief on a merely equitable title against a legal title must, in his pleadings, whether he is plaintiff or defendant, set forth such a state of facts as would have entitled him to the relief he seeks under the old form of proceedings. When a party by his pleadings sets forth a merely legal title, he cannot on the trial be let into the proof of facts which show that, having an equity, he is entitled to a conveyance of the legal title. If he wants such relief he must prepare his pleadings with an eye to obtain it, and this must be done, whether he is seeking relief as plaintiff or defendant."

But neither in a separate suit in a Federal court, nor in an answer to an action of ejectment in a State court, can the mere occupation of the demanded premises by plaintiffs or defendants, for the period prescribed by the statute of limitations of the State, be held to constitute a sufficient equity in their favor to control the legal title subsequently

* Estrada *v.* Murphy, 19 California, 272; Weber *v.* Marshall, Ib. 457; Lestrade *v.* Barth, Ib. 671.

† 20 Missouri, 431.

conveyed to others by the patent of the United States, without trenching upon the power of Congress in the disposition of the public lands. That power cannot be defeated or obstructed by any occupation of the premises before the issue of the patent, under State legislation, in whatever form or tribunal such occupation be asserted.*

It follows that the judgment of the Supreme Court of Missouri must be REVERSED, and the cause be REMANDED for FURTHER PROCEEDINGS pursuant to this opinion; and it is

SO ORDERED.

NORWICH COMPANY *v.* WRIGHT.

1. The act of Congress of 1851, limiting the liability of ship-owners, includes collisions, as well as injuries to cargo; so that if a collision happens between two vessels at sea, and one of them is in fault without the privity or knowledge of her owners, the latter will only be liable for the amount of their interest in the vessel and her freight then pending; and that amount being paid into court, if insufficient to pay all the damages caused, will be apportioned *pro rata* amongst the owners of the injured vessel and of the cargoes of both vessels in proportion to their respective losses.
2. This liability of the ship-owners may be discharged by their surrendering and assigning to a trustee for the benefit of the parties injured, in pursuance of the 4th section of the act, the vessel and freight, although these may have been diminished in value by the collision, or other casualty during the voyage; and, *it seems*, that if they are totally lost the owners will be entirely discharged.
3. In this respect the act has adopted the rule of the maritime law as contradistinguished from that of the English statutes on the same subject.
4. The District Court, sitting as a court of admiralty, has jurisdiction of cases arising under the act, and may administer the law as provided in the 4th section.
5. The proper course of proceeding in such a case pointed out.

ERROR to the Circuit Court for the District of Connecticut; the case being this:

On the 3d of March, 1851, Congress passed an act† as fol-

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* Wilcox *v.* Jackson, 13 Peters, 516, 517; Irvine *v.* Marshall, 20 Howard, 558; Fenn *v.* Holme, 21 Id. 481; Lindsey *v.* Miller, 6 Peters, 672.

† 9 Stat. at Large, 635.